

**CV 05 4395**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----  
JUAN MONTOYA

WEXLER, J.

COMPLAINT

v.

VILLAGE OF GARDEN CITY, THE  
GARDEN CITY POLICE DEPARTMENT,  
POLICE OFFICER JAMES M. SOMMER,  
POLICE OFFICER JOHN DOE 1, POLICE  
OFFICER JOHN DOE 2, AND POLICE  
OFFICER JOHN DOE 3,

LINDAY, M.J.

Plaintiff Demand  
A Trial by Jury

FILED

IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

SEP 16 2005

DAVID SEGAL, ESQ.  
\* 

Defendants.

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Plaintiff, by his attorney, DAVID SEGAL, respectfully  
alleges as follows:

JURISDICTION

1. This action is brought under the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of the Constitution of the United States and the Civil Rights Law of the United States, as codified in Title 28, U.S.C. Sections 1331 and 1343 and Title 42, USC Sections 1981, 1983 and 1985.

2. Plaintiff further invokes the pendent jurisdiction of this Court to consider claims arising under State Law.

VENUE

3. The course of conduct and other acts complained of herein arose and occurred in whole or in part within the County of Nassau, Village of Garden City, in the Eastern District of New York.

PARTIES

4. Plaintiff, JUAN MONTOYA, is and was at all times herein mentioned, a citizen and a resident of the State of New York.

5. The defendant, VILLAGE OF GARDEN CITY, (hereinafter referred to as GARDEN CITY) is a municipal corporation and political subdivision of the State of New York.

6. The defendant, VILLAGE OF GARDEN CITY POLICE DEPARTMENT (hereinafter referred to as GCPD) is a municipal agency under the supervision and control of the defendant GARDEN CITY.

7. That defendant, JAMES M. SOMMER (SOMMER), is a police officer employed by the defendants GARDEN CITY and GCPD.

8. That the defendants, JOHN DOE 1, JOHN DOE 2 AND JOHN DOE 3 are police officers employed by the defendants, GARDEN CITY and GCPD.

9. That at all times herein mentioned, defendants SOMMER, JOHN DOE 1, JOHN DOE 2 AND JOHN DOE 3, were employed by the defendants GARDEN CITY and GCPD, in the capacity of police officers, and were assigned to the defendant GCPD, and were acting in such capacity as the agents, servants and employees of

the defendants, GARDEN CITY and GCPD. Each is sued individually and in their official capacity.

10. That at all the times herein mentioned, defendants, SOMMER, JOHN DOE 1, JOHN DOE 2 AND JOHN DOE 3, were acting under color of state law and under their authority as police officers for the defendants, GARDEN CITY and GCPD.

FACTS

11. That on June 25, 2004, at or about 9:30 A.M., plaintiff, JUAN MONTOYA, was lawfully operating his motor vehicle, on Edgemere Street, in the Village of Garden City, County of Nassau, when Police Officers SOMMER, JOHN DOE 1, JOHN DOE 2 AND JOHN DOE 3 jointly and severally, committed the following acts:

- a) Arrested and imprisoned the plaintiff without a legal or just reason or probable cause.
- b) Maliciously and without provocation, used excessive, illegal and unjustified force on plaintiff, which caused serious and permanent physical and psychological injuries.
- c) Failed and refused to timely advise plaintiff of the reasons for his arrest.
- d) Failed to render prompt medical care to plaintiff.

12. That following plaintiff's arrest, the defendants, SOMMER, JOHN DOE 1, JOHN DOE 2 AND JOHN DOE 3, jointly and severally, committed the following acts:

- a) Continued to use excessive force on plaintiff in the police car.
- b) Made false statements to a superior officer at the Precinct concerning the plaintiff's arrest.
- c) Falsely swore to a Criminal Complaint in the District Court, County of Nassau.

13. That the plaintiff plead guilty in the District Court and paid a fine.

FIRST CAUSE OF ACTION

14. Plaintiff repeats and realleges each and every allegation contained in paragraphs numbered "1" through "13" of the complaint, as if the same were set forth more fully and at length herein.

15. That as a direct and proximate result of the intentional and malicious acts of the defendants, SOMMER, JOHN DOE 1, JOHN DOE 2 AND JOHN DOE 3, jointly and severally, as described above, all committed under color of state law and under their authority as police officers employed by the defendants, GARDEN CITY and GCPD, and while acting in the scope of their employment, and pursuant to authority vested in each of

them by defendants, GARDEN CITY and GCPD, the defendants, SOMMER, JOHN DOE 1, JOHN DOE 2 AND JOHN DOE 3, assaulted the plaintiff, used excessive force and charged plaintiff with criminal acts.

16. That by engaging in the foregoing acts, practices and courses of conduct, defendants, SOMMER, JOHN DOE 1, JOHN DOE 2 AND JOHN DOE 3, used their positions as uniformed police officers for improper purposes, subjecting plaintiff to physical abuse, deprivation of his rights, privileges, and immunities as guaranteed to him by the First, Fourth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and in that plaintiff was denied his protected rights to be free from unnecessary force, and to be secure in his right to liberty.

17. That none of the aforesaid acts which were perpetrated upon plaintiff were done as a consequence of any improper, criminal or suspicious conduct on the part of the plaintiff.

SECOND CAUSE OF ACTION

18. Plaintiff repeats and realleges each and every allegation contained in paragraphs numbered "1" through "17" herein, as if the same were set forth herein more fully and at length.

19. The defendants JOHN DOE 1, JOHN DOE 2 AND JOHN DOE 3, acting in concert and under color of state law, and each aiding

and abetting one another with knowledge of the systematic violation of plaintiff's Constitutional and Civil Rights by defendant SOMMER as previously alleged, did conspire to prevent plaintiff from obtaining redress from such violations and did further agree to undertake any actions necessary to hide, cover up, and falsely justify the actions of defendant SOMMER and in furtherance of, they did commit the following acts:

- a. Refused to aid plaintiff.
- b. Covered-up the actions of defendant, SOMMER.
- c. Helped to detain plaintiff for an unreasonable period of time despite plaintiff's repeated requests for information regarding his detainment.
- d. Assisted in the arrest of plaintiff for violations of the Penal Law of the State of New York, despite the fact that there was no just or probable cause for said charges.

20. That by engaging in the foregoing acts, all committed under color of state law and under their authority as police officers of the defendants, GARDEN CITY and GCPD, and while acting in the scope of their employment and pursuant to authority vested in them by the defendants, GARDEN CITY and GCPD, the defendants JOHN DOE 1, JOHN DOE 2 AND JOHN DOE 3, jointly and severally, entered into and carried out a plan and scheme designed and intended to deny and deprive plaintiff of

his rights, privileges and immunities as guaranteed to him by the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, and in fact did so deny and deprive plaintiff of his rights, privileges and immunities.

THIRD CAUSE OF ACTION

21. Plaintiff repeats and realleges each and every allegation contained in paragraphs numbered "1" through "20" herein, as if the same were set forth herein more fully and at length.

22. That defendants, GARDEN CITY and GCPD, by their deliberate acts, gross negligence and reckless conduct in failing to adequately train, discipline and supervise police officers SOMMERS, JOHN DOE 1, JOHN DOE 2 AND JOHN DOE 3, and in their failure to promulgate and put into effect appropriate rules and regulations applicable to the duties, conduct, activities and behavior of their agents, servants and employees, directly caused the harm suffered by plaintiff.

23. That the acts of the defendants, SOMMER, JOHN DOE 1, JOHN DOE 2 AND JOHN DOE 3, committed under color of state law, deprived plaintiff of his rights, privileges and immunities as guaranteed to him by the First, Fourth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution.

WHEREFORE, plaintiff, JUAN MONTOYA, demands judgment as follows:

A. As to the first cause of action: In favor of plaintiff and against defendants, jointly and severally, compensatory damages in the amount of Twenty-Five Million (\$25,000,000.00) Dollars, and punitive damages against the defendants in the sum of Twenty-Five Million (\$25,000,000.00) Dollars.

B. As to the second cause of action: In favor of Plaintiff and against defendants, jointly and severally, compensatory damages in the amount of Twenty-Five Million (\$25,000,000.00) Dollars and punitive damages against the defendants in the amount of Twenty-Five Million (\$25,000,000.00) Dollars.

C. As to the third cause of action: In favor of plaintiff and against defendants, jointly and severally, compensatory damages in the amount of Twenty-Five Million (\$25,000,000.00) Dollars and punitive damages against the defendants in the amount of Twenty-Five Million (\$25,000,000.00) Dollars.

D. For such other and further relief as to this Court may deem just and proper, including costs and reasonable attorney's fees.

Dated: **New York, New York**  
**September 7, 2005**

Yours, etc.,  


**DAVID SEGAL, (DS-5108)**  
**Attorney for Plaintiff**  
**30 Vesey Street**  
**New York, New York 10007**  
**(212) 406-9200**

Index No.:

Year

RJI No.:

Hon.:

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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**JUAN MONTOYA**

-against-

**VILLAGE OF GARDEN CITY, THE  
GARDEN CITY POLICE DEPARTMENT,  
POLICE OFFICER JAMES M. SOMMER,  
POLICE OFFICER JOHN DOE 1, POLICE OFFICER JOHN  
DOE 2, AND POLICE OFFICER JOHN DOE 3**

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**SUMMONS AND COMPLAINT**

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**DAVID SEGAL**

Attorney for Plaintiff

Office & Post Office Address, Telephone  
**30 VESEY STREET  
NEW YORK, N.Y. 10007  
(212)406-9200**

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To:

Signature (Rule 130-1.1-a)

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Print name beneath

Attorney(s) for

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Service of a copy of the within

is hereby admitted.

Dated,

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Attorney(s) for

Please take notice

1 NOTICE OF ENTRY

that the within is a (certified) true copy of a  
duly entered in the office of the clerk of the within names court on

1 NOTICE OF SETLEMENT

that an order of which the within is a true copy will be presented for settlement to the HON.  
one of the judges of the within names court, at on

Yours, etc.

**DAVID SEGAL**

Attorney for

Office & Post Office Address

**30 VESEY STREET**

**NEW YORK, NY 10007**

To:

Attorney(s) for: